IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL TRANSFER APPL. No. 21 of 2007

SMT.PUSHPA
V/S
SURESH

Mr. KL KHATRI, for the appellant / petitioner

Date of Order : 30.7.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

By this transfer petition the petitioner seeks transfer of divorce petition pending in the Court of District Judge at Alwar, as case no. 471/2005, to be transferred at Barmer.

The allegations in the application are, that the parties were married on 30.11.93 at Barmer, and two children were born out of wedlock, while she was residing in the matrimonial home, the husband and family members harassed for dowry, and once gave beating, thereupon she came to parental home, along with children. Then, it is alleged that the petitioner’s father is an old man of 75 years, and there is no source of income, and there is no other male member in the family. Then, it is alleged that the non-petitioner filed a divorce petition earlier at Alwar, being Case no. 209/97, and for that, transfer petition was filed, and the case was transferred to Barmer.

Then, the divorce petition was withdrawn on 28.9.2004. Thereafter the petitioner resided with the husband at Alwar, but there is no change in the attitude. Consequently she came to the parental house. Thereafter the present divorce petition has been filed on 31.1.2007. With these averments it is contended, that the petitioner has two children, with no source of income, and father also has no source of income, as such the petitioner cannot contest the divorce petition at Alwar. Then, it is also alleged that the husband threatened the petitioner, that if she comes alone to Alwar for contesting the case, husband could act wrongly with the petitioner, therefore, the transfer is sought.

Vide order dt. 5.4.2007 notice was issued for final disposal, and one set of notice was also directed to be sent by registered post, which was served on the non-petitioner for the hearing of 25.7.2007. Thereafter the case was listed today, but nobody appeared on behalf of the respondent.

Arguing the writ petition learned counsel for the petitioner reiterated same submissions, and relied upon the judgment of Hon'ble the Supreme Court, in Priyanka Biswas Vs. Subrato Biswas, reported in 2005(3) Civil Court Cases-258(S.C.), Single Bench judgments of Madhya Pradesh High Court, in Anita Shrivastava Vs. Ashish Saxena, reported in

2006(3) Civil Court Cases-663 (M.P.), and Vandana Gupta Vs. Ravi Gupta, reported in 2006(2) Civil Court Cases-433 (M.P.). Reliance was also placed on the judgment of Bombay High Court, in Vidhya Shankar Iyer Vs. Shankar Nagraj Iyer, reported in 2006(4) Civil Court Cases-606 (Bombay), and one judgment of Punjab & Haryana High Court, in Vandana Garg Vs. Sanjay Kumar Garg, reported in 2005(3) Civil Court Cases-528 (P&H). Learned counsel also relied upon one of my judgments, being in Gayatri Vs. Nand Kumar reported in 2001 DNJ (Raj.)-64. Learned counsel also passed on photostat copy of some of the judgments, which were not cited.

I have considered the submissions and the judgments cited at the bar.

First of all, I take up my own judgment in Gayatri's case, suffice it to observe, that that judgment was rendered on 23.3.2000, at which time Hon'ble the Supreme Court was bearing substantial amount of leniency in favour of wife, in the matter of transferring the cases, on considerations, mentioned in my judgment, but then, now an entirely different view is being taken by Hon'ble the Supreme Court, therefore, I need not follow my judgment in Gayatri's case.

Then, so far other judgments of Hon'ble the Supreme Court, and other High Courts, as cited, need not

detain me much, in view of the latest judgment of Hon'ble the Supreme Court, in Anindita Das Vs. Srijit Das, reported in 2006(9) SCC-197, wherein Hon'ble the Supreme Court has observed as under:-

> "3. Even otherwise, it must be seen that at one stage this Court was showing leniency to ladies. But since then it has been found that a large number of transfer petitions are filed by women taking advantage of the leniency shown by this Court. On an average at least 10 to 15 transfer petitions are on board of each court on each admission day. It is, therefore, clear that leniency of this Court is being misused by the women."

Then, in para-4 onwards the facts were considered, and the fact of wife having six years old child was not considered to be material, as it would be taken care of by the grand parents, and by grand father here. Then, regarding alleged threat, no particulars have been given, and pleading is as vague as it could be. It is a different story, that these days this court is often coming across such stereotyped allegations, in almost all the transfer petitions filed by the wife in matrimonial matters, without any detail or any basis. Therefore the allegation is required to be not taken to be material, to claim transfer of the divorce petition, as claimed here.

So far financial difficulties are concerned, the petitioner can very well apply to the Family Court, and that will be adequately taken care of. However, it may be

clarified, by way of directing the learned trial court, that if the petitioner moves an application under Section 24, the learned trial court shall decide that application on utmost priority basis, and see that the wife does not suffer any handicap in contesting the case, on financial grounds.

Thus, in view of judgment in Anindita's case, I do not find any sufficient ground to accept the transfer petition. The same is, therefore, dismissed.

(N P GUPTA),J.

/Sushil/